

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF UNION LIGHT, HEAT)
AND POWER COMPANY FOR ECONOMIC) CASE NO. 2004-00253
DEVELOPMENT TARIFFS)

COMMENTS OF THE ATTORNEY GENERAL
ON THE AMENDMENT TO APPLICATION

Following written comments and reply comments, an informal conference was held on November 19, 2004, between ULH&P, the AG, and Commission staff concerning the three economic development tariffs proposed by ULH&P in this case. As a consequence of that informal conference, ULH&P filed an Amendment to Application in which the terms of service previously proposed under tariff riders ED and UR have been combined into proposed Rider DIR (Development Incentive Rider). Rider BR continues to be proposed as a separate tariff.

Rider DIR and Rider BR address concerns raised in the comments and at the informal conference about the absence of approval by the Commission prior to implementation of the rates for any customer by requiring that a special contract be signed in conjunction with service taken under either of the tariffs. The special contract would be subject to the review and approval of the Commission which would thereby be able to review and approve the terms on which service is offered. Rider DIR also addresses the concerns about potential free-riders by stating that it is available at the option of the utility.

As now proposed Rider DIR attempts to address concerns raised about the absence of any requirement in the original proposals of a term of service that exceeds the period in which discounted service is offered by providing:

The customer shall continue to take service from the Company at the same or greater demand and usage levels for a period of at least two (2) years following the twelve (12) month incentive period. Failure to do so will result in the Company rebilling the customer under standard service rates for usage during the incentive period.

The problem with this proposal is that it appears to run headlong into KRS 278.225 which provides:

All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.

Reaching back two or more years to rebill service rendered would fly directly in the face of KRS 278.225.

Rider BR now states that the customer is “expected” to continue to take service for three to five years following the incentive period, but does not require a commitment to do so as a prerequisite to the receipt of the discount. While this avoids the proscription of KRS 278.225, it imposes no commitment to continue taking service past the incentive period on the customer.

The proposed amended tariffs better address some of the concerns considered and outlined in Administrative Case 327 though Rider DIR now conflicts with KRS 278.225. ULH&P’s efforts have not cured the fact that both tariffs run afoul of KRS 278.170 as both tariffs still grant free or reduced rates to parties not designated legislatively in KRS 278.170 (2) and (3) to receive reduced rates. The tariffs are, therefore, illegal.

It appears that though economic development rates have been used since the late 1980's,¹ and though their usage was given consideration in Administrative Case No. 327,² there has been no determination of whether offering reduced rates to those not enumerated as the legislatively designated recipients of reduced rates under KRS 278.170(2) exceeds the Commission's authority. KRS 278.170(2) provides:

Any utility may grant free or reduced rate service to its officers, agents, or employees, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents, and employees of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity. The terms "officers" and "employees," as used in this subsection, include furloughed, pensioned, and superannuated officers and employees, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

The list of those customers to which free or reduced rates may be offered is extended in Subsection (3) of KRS 278.170 to include rates for fire fighting and training fire fighters.

The fact that utilities may create reasonable classes of service under KRS 278.170(1) and may charge reasonable rates under KRS 278.030 is not a basis on which to grant free or reduced rates to individuals within those classes. The authority to grant free or reduced rates for service is defined and set out in Sections (2) and (3) of KRS 278.170. The Commission, as a creature of statute, has no authority to allow Riders DIR

¹ The first in depth consideration of economic development rates appears in *Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company*, Case No. 10064, Order dated July 1, 1988, pp. 88-95.

² The Order in *An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities*, Administrative Case No. 327, was issued on September 24, 1990.

and BR because those tariffs clearly set out discounts from the rates otherwise applicable to the classes to which the customers eligible for Riders DIR and BR belong and those customers are not among those for/to whom free or reduced service may be offered. The tariffs are illegal and should not be approved.

Therefore, though ULH&P has made an effort to address some of the concerns raised at the informal conference, its application is still illegal and should be denied.

Respectfully submitted,

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NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 18th day of January, 2005, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

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